

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID LITMON, JR.,

No. C-10-3894 EMC

Plaintiffs

v.

EDMUND G. BROWN, Attorney General of  
California,

**ORDER RE PLAINTIFF'S MOTION  
FOR LEAVE TO FILE FIRST  
AMENDED COMPLAINT**

**(Docket No. 22)**

Defendants.

Plaintiff, David Litmon, Jr., brought this action, *pro se*, against Defendant, Edmund G. Brown, Attorney General of California ("DOJ"). Plaintiff contended that the California Department of Justice's Policy requiring that individuals adjudicated to be sexually violent predators register in-person every ninety days violates (1) his due process rights and (2) the Fifth Amendment prohibition against double jeopardy. On March 15, 2011, the Court dismissed both claims of Plaintiff's Complaint with prejudice. The pending motion (Docket No. 22) was filed and entered into the docket on March 16, 2011, but Plaintiff apparently sent the motion to the Court before receiving notice of the Court's ruling.

Plaintiff seeks leave to amend the Complaint to add allegations concerning a violation of Constitution's Equal Protection clause. The Court will treat this motion as a motion to reconsider its dismissal of the case with prejudice such that he may file a Rule 15 motion for leave to file an amended complaint. *See generally Vicom, Inc. v Harbridge Merchant Servs.*, 20 F.3d 771 (7th Cir. 1994) (plaintiff seeking leave to amend in postjudgment context must file a Rule 59(e) or Rule 60(b) motion prior to filing Rule 15(a) motion).


Under Rule 60(b)(6), the Court may relieve a party of the terms of a judgment for any reason that justifies relief. Fed. R. Civ. P. 60(b)(6). A party may file a motion to alter or amend a judgment if the motion is filed within 10 days after entry of the judgment. Fed. R. Civ. P. 59(e). Under either rule, the motion is timely. Since the petitioner attempted to file his motion before the Court entered judgment, and in light of the plaintiff's *pro se* status and, more importantly, the fact that he has not previously sought to amend the complaint but did express an interest in doing so at the January 21, 2011 hearing, the Court will, in its discretion, amend its judgment. *Cf. Roland v. Rivera*, 2007 U.S. Dist. LEXIS 41522 (N.D.N.Y. June 6, 2007) (granting Rule 60(b) motion and permitting plaintiff to amend complaint after finding, under the specific circumstances of the case, that the plaintiff's *pro se* status and asserted mental incapacity justified relief from the operation of the judgment). Specifically, the Court will permit Plaintiff to seek leave to assert the Equal Protection claim denominated as "Claim Two" of the "First Amended Complaint" accompanying his motion. The Court will not revisit the due process and double jeopardy claims already ruled upon (referred to as the First and Third Claims in the "First Amended Complaint" accompanying the motion). This amounts to a partial grant and partial denial of Plaintiff's implied motion for relief in order to file the instant motion.

Accordingly, Plaintiff's Motion for Leave to File a First Amended Complaint is permitted but only to the extent the motion seeks leave to assert a cause of action for violation of the Fourteen Amendment Equal Protection clause pursuant to Federal Rule of Civil Procedure 15. Defendant shall have until April 6, 2011 to file a response. Plaintiff's Reply, if any, shall be due by April 13, 2011. The Court will then take the matter under submission unless it schedules a hearing.

This order disposes of Docket No. 22.

IT IS SO ORDERED.

Dated: March 21, 2011

  
EDWARD M. CHEN  
United States Magistrate Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAVID LITMON, JR.,

No. C-10-3894 EMC

Plaintiffs

v.

**CERTIFICATE OF SERVICE**

EDMUND G. BROWN, Attorney General of  
California,

Defendants.

\_\_\_\_\_ /

I, the undersigned, hereby certify that I am an employee in the U.S. District Court, Northern District of California. On the below date, I served a true and correct copy of the attached, by placing said copy/copies in a postage-paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy/copies into an inter-office delivery receptacle located in the Office of the Clerk.

**DAVID LITMON, JR.**  
29083 Mission Boulevard, Apt. 207  
Hayward, CA 94544

Dated: March 21, 2011

RICHARD W. WIEKING, CLERK

By:           /s/ Leni Doyle            
Leni Doyle  
Deputy Clerk